14

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1918

No. [redacted]199

THE UNITED STATES, APPELLANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

FILED JUNE 1, 1917.

(25985)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 518.

THE UNITED STATES, APPELLANT,

vs.

THE UNION PACIFIC RAILROAD COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

1 I. *Petition and Exhibit "A." Filed April 29, 1915.*

In the Court of Claims of the United States.

THE UNION PACIFIC RAILROAD COMPANY, claimant,
vs.
THE UNITED STATES.
No. 33056.

To the Honorable Court of Claims:

The Union Pacific Railroad Company, claimant, respectfully represents:

I.

That it is a corporation duly created, organized, and existing under the laws of the State of Utah, and as such corporation now is, and was during all of the times when the services hereinafter mentioned were performed, engaged as a common carrier by railroad in the transportation of passengers and freight in and through various States of the United States, and, through connections with other railroad companies, between the points referred to herein.

II.

2 Under the acts of Congress granting lands in aid of railroads and acts of Congress regulating the expenditure of appropriations by the United States for Army transportation over such land-grant railroads, said land-grant railroads were required to transport troops and property of the United States at not exceeding 50 per centum of the rates charged private parties for similar transportation; but in none of said acts were said land-grant railroads required, nor have they ever agreed, to transport at such reduced rates any other persons than "troops of the United States."

III.

Some years ago, and prior to the times when the services hereinafter mentioned were performed, the railroad companies of the United States generally, including claimant, severally agreed with the Quartermaster General of the United States Army (subject to certain exceptions not necessary here to be stated) to accept, for the transportation of troops and property of the United States, the lowest net fare lawfully available as derived through deductions on account of land-grant distance via a usually traveled route for military traffic from a lawful fare filed with the Interstate Commerce Commission as applying from point of origin to destination via such route at time of movement. These agreements, commonly known as "Land-Grant Equalization Agreements," were in force at the times of the transactions hereinafter referred to.

IV.

At various times during the years 1913, 1914, and 1915 claimant, upon transportation requests of the War Department of the
3 United States, transported certain persons belonging to the following classes, to wit:

1. Rejected applicants for enlistment in the Army en route to recruiting stations.

2. Discharged enlisted men en route to their homes or elsewhere after serving sentence as military prisoners.

3. Former enlisted men of the Army en route to their homes, on discharge.

4. Former enlisted men of the Army en route to their homes, on retirement.

5. Enlisted men of the Army en route to their proper stations after having reported from furlough.

In making payment for said transportation services the United States, through its accounting officers, against the protest and objection of the claimant, refused to pay the claimant therefor at the lawfully published tariff rates properly chargeable for such services, and paid claimant for said transportation only at the rates authorized for the transportation of "troops of the United States" over land-grant railroads, although the persons so transported were not "troops of the United States" within the meaning of said land-grant acts or of the acts of Congress passed subsequent thereto regulating the expenditure of appropriations for army transportation service over such land-grant railroads, and were not embraced within the aforesaid "Land-grant equalization agreements."

V.

By reason of said unauthorized action claimant has been
4 paid nine hundred forty-three dollars and fifty-five cents ($943.55) less than it would have received if it had been paid for said transportation services at lawfully published tariff rates properly chargeable for such services, the amount disallowed with respect to each of the several classes of persons so transported being as follows:

1. For rejected applicants for enlistment in the Army	$16.63
2. For discharged military prisoners	236.98
3. For discharged soldiers	442.27
4. For retired soldiers	235.39
5. For furloughed soldiers	12.28
	943.55

A statement, marked Exhibit A, showing in detail the various transactions herein referred to, the amounts claimed by the Union Pacific Railroad Company for the transportation services rendered by it to the United States as aforesaid at the published tariff rates, the amounts allowed by the accounting officers of the United States

[illegible]	11-[illegible]-14	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	P [illegible]	"	[illegible]	[illegible]	"	Discharged Genl. Prisoner
[illegible]	10-[illegible]-14	6612?	8640?	26 76?	20 77	5 97?	P 585775?	9-12-14	Cheyenne, Wyo.	Indianapolis, Ind.	"	Discharged Soldier
"	"	"	"	17 98?	16 08?	1 90	P 416176	9-24-14	Fort Riley Kans.	Columbus, [illegible]	"	"
†	"	"	8620?	20 20?	16 44	3 77	P 585770?	9-20-14	Cheyenne, Wyo.	Rochelle, Ill.	"	"
"	"	"	8696?	20 48?	16 74	3 74	P 585790?	10-20-14	"	St. Louis, Mo.	"	"
22217?	11-20-14	6594?	8644	12 07?	10 26?	1 81?	P 545075?	9-11-14	Denver, Colo.	Salina, Kans.	"	Rejected Applicant
22518?	11-20-14	6595?	8645	14 55?	10 20?	4 35	P 425440?	9-14-14	Leavenworth, Kas.	Denver, Colo.	"	Discharged Genl Prisoner
22520?	11-20-14	6012?	8655?	14 74?	9 50?	5 24?	P 416222?	9-20-14	Fort Riley, Kas.	Segundo, Colo.	"	Soldier returning from furlough
22526?	12-10-14	6325?	8481?	18 40			P 416[illegible]	10-4-14	"	Pontiac, Mich.	"	
"	"	"	"	27 60?	°40 57?	5 65?	P 525792?	"	Cheyenne, Wyo.	Dayton, Ohio	"	Discharged Soldiers
22428?	"	6306?	8488?	14 55?	10 20	4 35	P 425044?	10-20-14	Leavenworth, Kas.	Denver, Colo.	"	Discharged Genl. Prisoner
"	"	"	"	40 00	27 52?	12 48?	P 425051?	10-20-14	"	San Francisco, Calif.	2nd	"
22760?	2-1-15	77[illegible]	8726?	20 48?			P 525806?	11-12-14	Cheyenne, Wyo.	St. Louis, Mo.	1st	
"	"	"	"	20 28?	°28 60?	7 18?	P 525806?	11-12-14	"	Rochelle, Ill.	1st	Discharged Soldiers
22702?	1-20-15	7750?	8728?	20 51?	14 48?	6 03?	P 425764?	11-12-14	Denver, Colo.	Sterling, Ill.	"	" Soldier
22741?	2-1-15	7764	8730?	14 25?			P 425965?	11-12-14	Leavenworth, Kans.	Denver, Colo	"	
"	"	"	"	40 00	°37 73?	14 62?	P 425016?	11-20-14	"	San Francisco, Calif.	2nd	Discharged Genl. Prisoners
22880?	1-27-15	7469?	8760	18 60			P 416276?	11-16-14	Fort Riley, Kans.	Washington D. C.	1st	
"	"	"	"	21 21?	°34 20?	4 61?	P 416272?	"	"	Westfield, Mass.	1st	Discharged Soldiers
22960?	3-1-15	8676?	8790	20 48	16 22?	4 26	P 525815?	12-22-14	Cheyenne, Wyo.	St. Louis, Mo.	1st	" Soldier
22982?	4-8-15		8722?	3 65?	§	3 65?	P 425018?	12-4-14	Denver, Colo.	Kittrog?, Ill.	1st	"
22961?	3-1-15	8677	8791	14 55?	14 23?	32?	P 425012?	"	"	Sioux City, Ia.	1st	Rejected Applicant
23002?	3-8-15	10620?	8620?	12 07	10 26?	1 81?	P 425001?	1-8-15	"	Salina, Kans.	1st	"
23001?	3-8-15	10620?	8622?	20 50	17 20?	3 30?	P 525824?	1-8-15	Cheyenne, Wyo.	Rochelle, Ill.	1st	Discharged Soldier
23211?	4-8-15	12090?	8666?	18 25?			P 416209?	2-8-15	Fort Riley, Kans.	Louisville, Ky.	1st	
"	"	"	"	25 50?			P 525858?	2-8-15	Cheyenne, Wyo.	Indianapolis, Ind.	1st	
"	"	"	"	20 48	°25 06?	10 20?	P 525835?	2-11-15	"	St. Louis, Mo.	1st	Discharged Soldiers
23212?	4-8-15	12001	8868?	40 00	27 53?	12 47	P 481802?	2-2-15	Leavenworth, Kans.	San Francisco, Calif.	2nd	Discharged Genl. Prisoner
23229?	4-10-15	14124	8875?	14 55?	°10 20	4 35	P 399540?	2-12-15	"	Denver, Colo.	1st	Discharged Soldier
23213?	4-8-15	12092?	8876	20 47	18 81?	1 66	P 416554?	2-20-15	Fort Riley, Kans.	Parrish, Ala.	1st	"
23153	4-21-15?		[illegible]	30 60?	24 61	5 99	P 525850?	2-7-15	Cheyenne, Wyo.	Columbus, Ohio	1st	"

455 47? 1805.49 255.78

* Warrant not yet received. Letter
° Detail not furnished in "Notice of Allowance of Claim" issued by Auditor for War Department
† Supplementary bill. not yet received.
§ Settlement ~~certificate not yet issued. Bill sent to Washington by Depot Quartermaster, Chicago April 6th, 1915~~

Auditor's Office,
Omaha, Nebraska, April 17th, 1915.

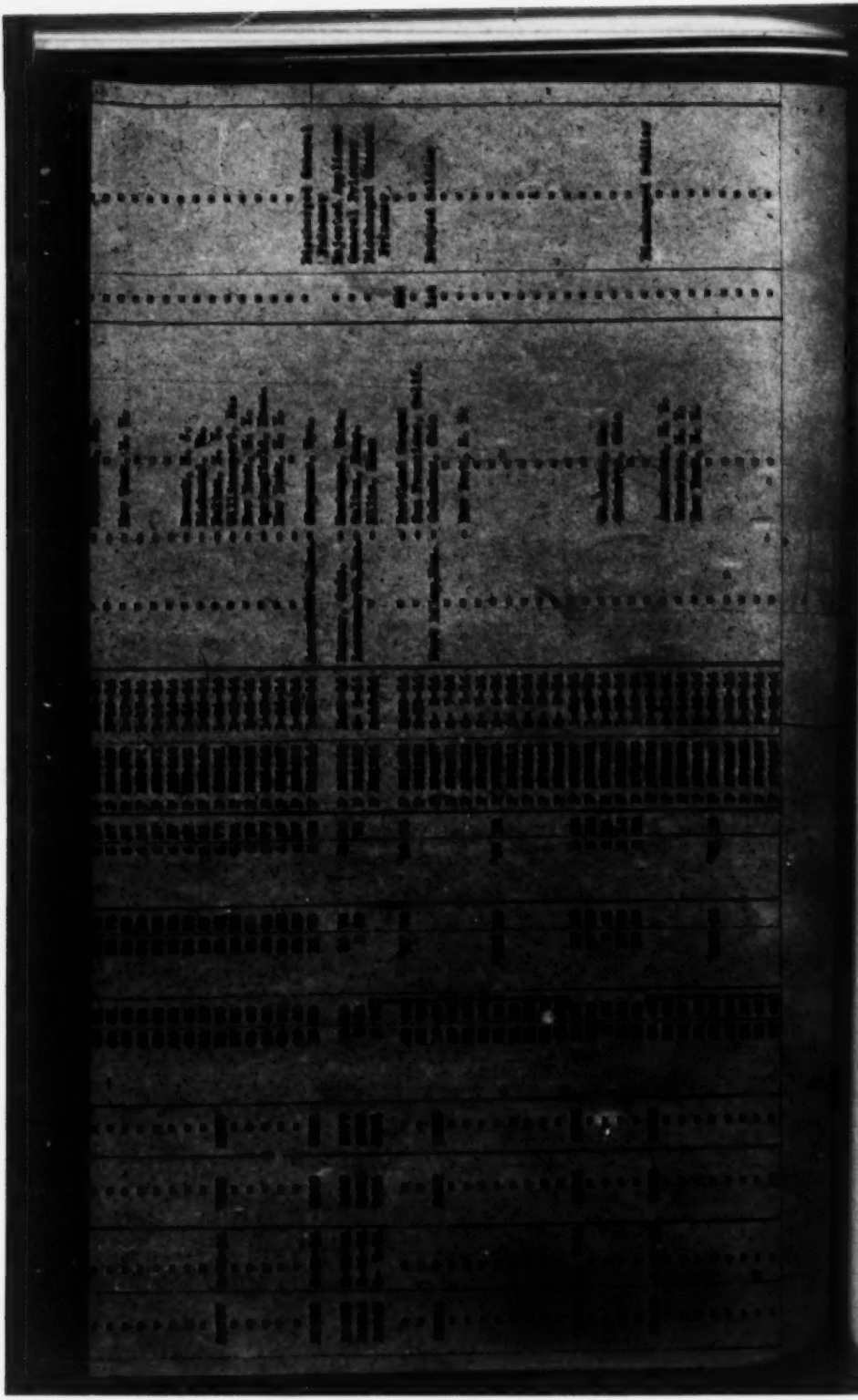
SUMMARY OF EXHIBIT "A".

Statement of Auditor's Office, U.P.R.R.Co., November 30, 1914 .... Disallowed $183.87?
Statement of Accounting Department, U.P.R.R.Co., January 30, 1915, (With interlineations by Chas. E. Bates, April [illegible] 1915) Disallowed $830.90?
Statement of Accounting Department, U.P.R.R.Co., April 17, 1915, (With interlineations by Chas. E. Bates, April 30, 1915)... Disallowed [illegible]
Total Disallowed $ [illegible]

UNION PACIFIC RAILROAD COMPANY

Statement of bills against the U. S. Government for passenger transportation in dispute, account question of Land Grant Deduction in connection with transportation furnished to Discharged Soldiers, Rejected Applicants, Etc.

Settlement Number	Settlement Date	Warrant Number	Bill Number	Amount As Rendered	Amount As Settled	Amount Disallowed	Transportation Request Number	Transportation Request Date	Destination of Transportation	Ticket Furnished Class	Ticket Furnished Account
21375	6-8-14	10889	8374	28 10	22 83	5 27	P 328461	3-30-14	Cheyenne, Wyo. - Toledo, Ohio	1st	Discharged Soldier
"	"	"	8408	30 25			P 328476	4- 4-14	" Rochelle, Ill.	"	"
"	"	"	"	27 20	* 20.57	7 63	P 328478	4- 6-14	" Montpelier, Ohio	"	"
21385	5-28-14	10684	8409	31 20	27 39	3 81	P 270284	4- 1-14	Fort Riley, Kan. New York City, N. Y.	"	"
"	"	"	"	31 20	27 39	3 81	P 270842	4- 8-14	" "	"	"
"	"	"	"	31 20	27 39	3 81	P 270846	4- 8-14	" "	"	"
"	"	"	"	31 20	27 39	3 81	P 270848	"	" "	"	"
"	"	"	"	25 15	22 80	3 35	P 270844	4- 6-14	" Rochester, N. Y.	"	"
"	"	"	"	9 75	7 61	2 14	P 270899	4- 1-14	" St. Louis, Mo.	"	"
"	"	"	8418	31 20	27 39	3 81	P 270850	4-11-14	" New York City, N. Y.	"	"
"	"	"	"	31 20	27 39	3 81	P 270852	"	" "	"	"
21431	6-23-14	11832	8417	40 60	34 33	6 27	P 328495	4-20-14	Cheyenne, Wyo. "	"	"
"	"	"	"	20 23	16 64	3 59	P 328491	4-16-14	" Rochelle, Ill.	"	"
"	"	"	8418	40 10	33 33	6 77	P 300704	4-18-14	" Washington, D. C.	"	"
"	"	"	8419	31 20	28 88	2 32	P 270860	4-14-14	Fort Riley, Greenfield, Mass.	"	"
21432	6-23-14	11833	8424	40 60	34 33	6 27	P 328494	4-21-14	Cheyenne, Wyo. New York City, N. Y.	"	"
"	"	"	"	40 60	34 33	6 27	P 328499	4-24-14	" "	"	"
21444	6-24-14	11899	8425	35 46	32 10	3 36	P 328704	"	" Texas City Texas	"	Soldier returning from furlough
"	"	"	8426	40 00	27 41	12 59	P 349978	4-22-14	Leavenworth, Kans.- Sacramento, Calif.	2nd	Discharged Genl. Prisoner
21514	7- 8-14	314	8442	12 07	9 81	2 26	P 368727	5-15-14	Denver, Colo. - Salina, Kans.	1st	Rejected Applicant
21481	6-29-14	10	8445	29 35			P 270476	5-11-14	Fort Riley Kans.- New York City, N. Y.	"	Retired Soldier En Route Home
"	"	"	"	12 80			P 270460	5- 6-14	" St. Paul, Minn.	"	"
"	"	"	"	29 35			P 270466	5- 7-14	" New York, N. Y.	"	"
"	"	"	"	17 90	* 82 88	6 96	P 270465	5- 6-14	" Columbus Ohio	"	"
21581	7-21-14	785	8447	29 35			P 270483	5-16-14	" Jersey City, N. J.	"	Discharged Soldier En Route home
"	"	"	"	20 25	* 34 90	5 60	P 270482	"	" Middletown, N. Y.	"	Discharged Soldiers
21755	8-25-14	2152	8801	20 25	16 66	3 59	P 328725	6- 1-14	Cheyenne, Wyo. - Rochelle, Ill.	"	Retired Soldier Enroute home
21876	9-18-14	2993	8882	31 90	29 27	2 63	P 416129	7-10-14	Fort Riley, Kans.- Boston, Mass.	"	"
21877	9-18-14	2994	8883	17 98	17 33	65	P 416131	7-13-14	" Columbus, Ohio	"	Discharged Soldier
21878	9-18-14	2995	8884	14 35	14 13	22	P 422652	7-21-14	Denver, Colo. Sioux City, Ia.	"	Rejected Applicant
22376	11-18-14	5880	8896	20 25	17 52	2 73	P 328754	8- 4-14	Cheyenne, Wyo. Rochelle, Ill.	"	Discharged Soldier
22380	11-28-14	5881	8897	20 25			P 328759	8-28-14	" "	"	Discharged Soldiers
"	"	"	"	19 65	* 34 20	5 70	P 328761	"	" Peoria, Ill.	"	"
[illegible]	11-?-14	[illegible]	[illegible]	16 07	10 [illegible]	1 61	P [illegible]	[illegible]	Denver, Colo. Salina, Kans.	"	Rejected Applicant



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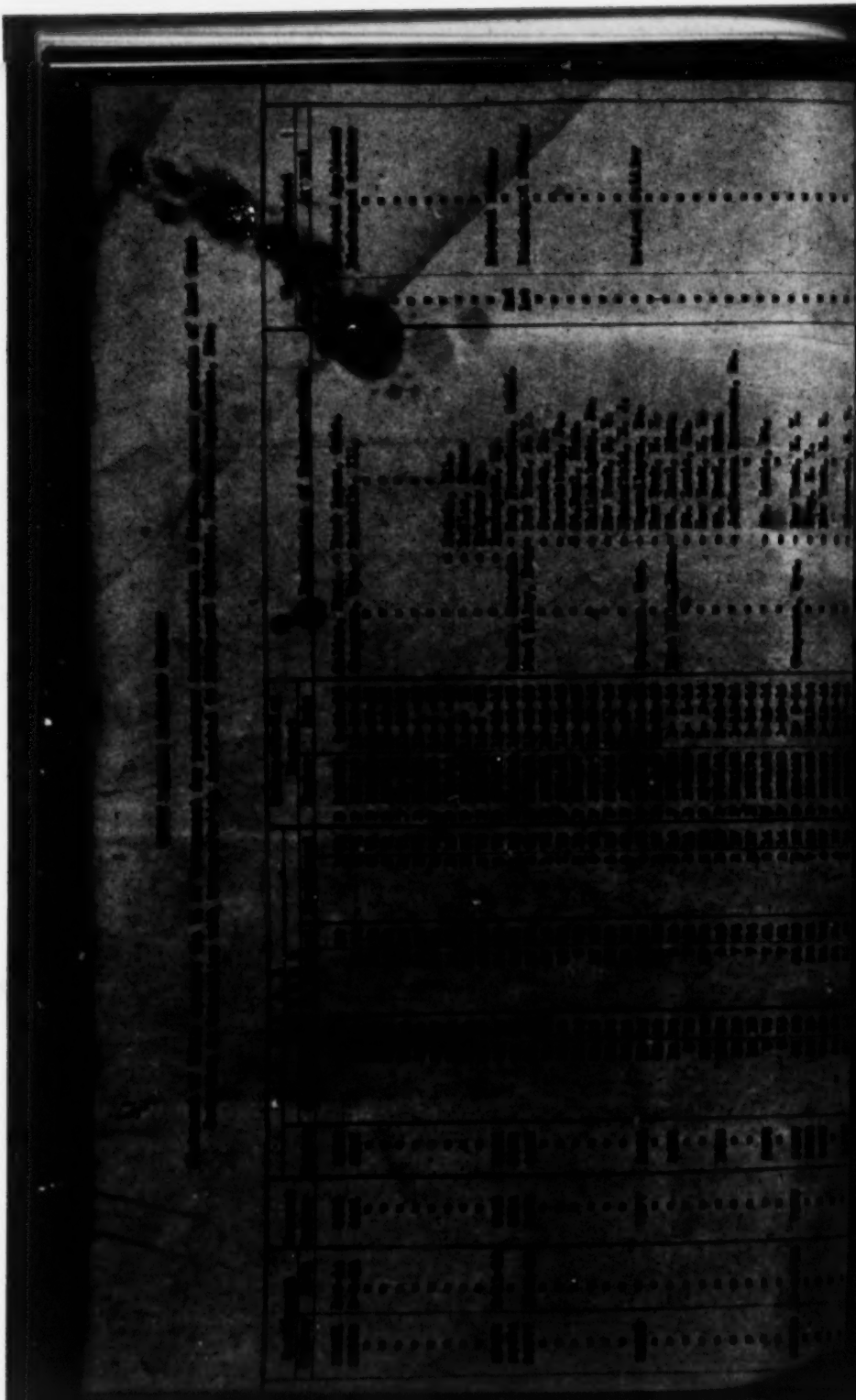

Settlement Number	Settlement Date	Warrant Number	Voucher	Amount As Rendered	Amount As Settled	Amount Disallowed	Transportation Request Number	Transportation Request Date	Destination of Transportation	Ticket Furnished Class	Ticket Furnished Account
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	6 16	P [illegible]	[illegible]-14	Leavenworth, Kans. - Denver, Colo.	1st	Discharged General Prisoner
"	"	"	[illegible]	[illegible]	[illegible]	6 16	P [illegible]	[illegible]-14	" "	"	"
"	"	"	"	[illegible]	[illegible]	6 16	P [illegible]	[illegible]-1-14	" "	"	"
"	"	"	[illegible]	[illegible]			P [illegible]	[illegible]-14	Fort Riley, Kans. - Columbus, Ohio	"	Discharged Soldier
"	"	"	"	[illegible]			P [illegible]	[illegible]-14	" New York, N. Y.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-14	" "	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-14	" "	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-14	" "	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-14	" "	"	"
"	"	"	"	[illegible]	*[illegible]	*[illegible]	P [illegible]	[illegible]-14	" - Washington, D. C.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-14	" - Baltimore, Md.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-14	" - Albany, N. Y.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-14	" - Decatur, Ala.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-14	" - Louisville, Ky.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-14	" - "	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-1-14	" - Philadelphia, Pa.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-1-14	" - Lumberton N. C.	"	"
"	"	"	[illegible]	[illegible]			P [illegible]	[illegible]-12-14	Cheyenne, Wyo. - Celina, Ohio	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-12-14	" - Wilkesbarre, Pa.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-9-14	" - Springfield, Mass.	"	"
"	"	"	"	[illegible]	*[illegible]	*[illegible]	P [illegible]	[illegible]-9-14	" - Philadelphia, Pa.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-10-14	" - "	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-9-14	" - Columbus, Ohio	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-10-14	" - Newark, N. J.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-9-14	" - Utica, N. Y.	"	"
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	*[illegible] 17	* 4 [illegible]	P [illegible]	[illegible]-21-14	Leavenworth, Kas. - Denver, Colo.	"	Discharged General Prisoner
"	"	"	"	[illegible]			P [illegible]	[illegible]-16-14	" - Salina, Kans.	"	"
"	"	"	[illegible]	[illegible]	[illegible]	[illegible]	P [illegible]	[illegible]-17-14	Cheyenne, Wyo. - Indianapolis, Ind.	"	Discharged Soldier
"	"	"	[illegible]	[illegible]			P [illegible]	[illegible]-16-14	Ft. Riley, Kans. - New York, N. Y.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-21-14	" - "	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-14	" - "	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-20-14	" - "	"	"
"	"	"	"	[illegible]	*[illegible]	*[illegible]	P [illegible]	[illegible]-14	" - "	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-14	" "	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-16-14	" - Concord, Ky.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-16-14	" - Romulus, Mich.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-20-14	" - "	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-21-14	" - Gilberton, Pa.	"	"
"	"	"	"	[illegible]			P [illegible]	[illegible]-16-14	" - Dayton, Ohio	"	"

2350.69 1,839.79 510.90

*[illegible] in "Notice of Allowance of Claim" issued by Auditor for

Auditor's Office.

Exhibit "A"

UNION PACIFIC RAILROAD COMPANY

Statement of bills against the U.S. Government for passenger transportation in dispute, account question of Land Grant Deduction in connection with transportation furnished to Discharged Soldiers, Rejected Applicants, Etc.

Settlement Number	Settlement Date	Warrant Number	Bill Number	Amount As Rendered	Amount As Settled	Amount Disallowed	Transportation Request Number	Transportation Request Date	Destination of Transportation	Ticket Furnished Class	Ticket Furnished Account
20006	12-2-13	5800	4999	15 29	15 07	22	P [illegible]	8-6-13	Denver, Colo. - Missouri Valley, Iowa	1st	Rejected Applicants
"	"	"	5068	*11 12	9 81	@1 31	P [illegible]	9-6-13	" - Salina, Kans.	1st	Rejected Applicant
"	"	"	5006	14 38	14 13	25	P [illegible]	9-20-13	" - Sioux City, Iowa	1st	Rejected Applicant
20039	12-6-13	5817	5051	¢31 99	22 30	8 69	P [illegible]	8-28-13	Ft.Riley, Kans. - Ft.Screven, Ga.	1st	Soldier returning to proper station from furlough
20005	12-2-13	5818	4953	40 00	27 52	12 48	P 277607	7-30-13	Leavenworth Kans. - San Francisco, Calif.	2nd	Discharged Genl.Prisoner
"	"	"	4999	15 35	11 73	3 62	P 277616	8-4-13	" - Cheyenne, Wyo.	1st	"
"	"	"	"	14 35	10 20	4 15	P 277620	8-4-13	" - Denver, Colo.	1st	"
"	"	"	5034	40 00	27 52	12 48	P 277675	8-27-13	" - San Francisco, Calif.	2nd	"
"	"	"	5040	40 00	27 52	12 48	P 277679	9-3-13	" - "	2nd	"
"	"	"	5039	14 70	10 55	4 15	P 277528	9-23-13	" - Ft. Logan, Colo.	1st	"
"	"	"	"	30 00	20 65	9 35	P 277585	9-25-13	" - San Francisco, Calif.	Col.	"
20075	12-12-13	6298	5099	32 95	27 39	5 56	P 252931	10-16-13	Ft.Riley Kans. - New York, N. Y	1st	Discharged Soldier
"	"	"	5008	30 00	17 32	12 68	P 277558	10-2 -13	Leavenworth, Kans. - Portland Oregon	Col.	Discharged Genl.Prisoner
"	"	"	5007	40 00	26 20	13 80	P 277581	10-12-13	" - "	2nd	"
20170	1-7-14	5802	5142	40 00	27 52	12 48	P 290048	11-17-13	" - San Francisco, Calif	2nd	"
"	"	"	"	14 35	10 20	4 15	P 290051	11-9-13	" - Denver, Colo.	1st	"
20211	1-9-14	5918	5155	40 00	27 52	12 48	P 319094	11-4-13	" - San Francisco, Calif	2nd	Discharged Soldier
20375	1-24-14	6614	5056	11 12	9 26	1 86	P 268295	9-26-13	Denver, Colo. - Salina, Kans.	1st	Rejected Applicant
20427	1-31-14	6615	5216	28 85	26 75	2 10	P 252904	10-21-13	Ft.Riley, Kans. - Carlisle Pa.	1st	Retired Soldier Enroute home
20428	"	6616	5220	32 95	27 39	5 56	P 278112	12-16-13	" - New York, N. Y.	1st	Discharged Soldier
"	"	"	"	32 95	27 39	5 56	P 278118	"	" - "	1st	"
"	"	"	"	29 70	27 42	2 28	P 278151	12-17-13	" - Scranton, Pa.	1st	"
20393	1-27-14	6617	5170	40 00	27 52	12 48	P 296088	11-29-13	Leavenworth, Kans. - San Francisco, Calif	2nd	Discharged Genl.Prisoner
"	"	"	5171	18 15	16 12	2 03	P 278086	11-29-13	Ft. Riley, Kans. - Toledo, Ohio	1st	Discharged Soldier
"	"	"	"	30 45	27 39	3 06	P 278088	"	" - Philadelphia Pa.	1st	"
"	"	"	"	19 45	16 98	2 47	P 278090	11-30-13	" - Columbus, Ohio	1st	"
"	"	"	5209	32 95	27 39	5 56	P 278096	12-2-13	" - New York N. Y.	1st	"
"	"	"	"	32 95	27 39	5 56	P 278092	12-1-13	" - "	1st	"
"	"	"	"	32 95	27 39	5 56	P 278098	12-2-13	" - "	1st	"
"	"	"	"	19 45	16 98	2 47	P 278094	12-1-13	" - Columbus, Ohio	1st	"
				824.31	660.50	163.81					

*Increased to $13.00 by Auditor for War Department
@ " " 9.19 do
¢Total amount of bill as rendered was $80.98, other requests included therein not in dispute, and settled as [illegible]

Issued by Accounting Department
Omaha, Nebraska, November 20th, 1914.

therefor and paid by the United States, and the amounts disallowed and remaining due and unpaid, is attached to and made a part of this petition. [Exhibit omitted in printing.]

VI.

Wherefore claimant says there is now justly due and owing it by the United States the sum of nine hundred forty-three dollars and fifty-five cents ($943.55), exclusive of all just credits and offsets, for which amount it prays judgment.

5 VII.

Claimant has at all times borne true allegiance to the United States, and has made no assignment or transfer of the aforesaid claims or of any interest therein.

UNION PACIFIC RAILROAD COMPANY,
Claimant,

By CHARLES H. BATES,
Its Attorney in Fact.

HARR & BATES,
Attorneys for Claimant.

DISTRICT OF COLUMBIA, *ss:*

Charles H. Bates, being first duly sworn, deposes and says that he has read the foregoing petition, by him subscribed for and on behalf of the Union Pacific Railroad Company as its attorney in fact, and that the matters and things stated in said petition are true, as he verily believes.

CHARLES H. BATES.

Sworn and subscribed to before me, a notary public in and for the District of Columbia, this 29th day of April, 1915, the affiant being to me personally well known.

[NOTARIAL SEAL.]

GEO. E. TERRY,
Notary Public, D. C.

12 II. *Amended petition. Filed by leave of court, March 10, 1916.*

Subject:—Transportation of applicants for enlistment in the army, etc. Amended petition. [Filed March 10, 1916.]

To the Honorable Court of Claims:

The Union Pacific Railroad Company, claimant, respectfully represents:

I.

Claimant is a corporation duly created, organized, and existing under the laws of the State of Utah, and as such corporation now is, and was during all of the times when the services hereinafter

mentioned were performed, engaged as a common carrier by railroad in the transportation of passengers and freight in and through vaious States of the United States and between the points referred to herein, either directly over its own lines or in conjunction with connecting carries.

13 II.

Under the acts of Congress granting lands in aid of railroads and acts of Congress regulating the expenditure of appropriations by the United States for Army transportation over such land-grant railroads, said land-grant railroads were required to transport troops of the United States at certain less rates than those charged private parties for similar transportaion; but in none of said acts were said land-grant railroads required, nor have they ever agreed, to transport at such less rates as "troops of the United States," nor at all, the certain persons more particularly referred to in Paragraph IV hereof.

III.

Some years ago, and prior to the times when the services hereinafter mentioned were performed, the railroad companies of the United States generally, including claimant, severally agreed with the Quartermaster-General of the United States Army (subject to certain exceptions not necessary here to be stated) to accept, for the transportation of troops of the United States, the lowest net fare, and lowest net excess of baggage rate, lawfully available as derived through deductions on account of land-grant distance via a usually traveled route for military traffic from a lawful fare filled with the Interstate Commerce Commission as applying from point of origin to destination at time of movement. These agreements, commonly known as "Land-Grant Equalization Agreements," were in force at the times of the transactions hereinafter referred to. (See Circular No. 23, Quartermaster General's Office, 1911, dated November,
14 15, 1911, and Circular No. 6, office of the chief, Quartermaster Corps, 1913, dated March 1, 1913, entitled "Freight and Passenger Land-Grant Equalization Agreements and List of Carriers Participating," printed and published by the Government.)

IV.

At various times during the years 1913, 1914 and 1915, claimant, upon transportation requests issued by the War Department of the United States, transported certain persons belonging to the following classes, to wit:

1. Applicants for enlistment in the Army:

(a) Accepted applicants, i. e., applicants examined at general recruiting stations and found mentally, morally and physically fit for service and being forward to recruiting depots or depot posts for final examination and actual enlistment.

(b) Rejected applicants, i. e., those finally rejected at the recruiting depots or depot posts and being returned to the recruiting stations whence they came.

2. Discharged military prisoners, i. e., discharged enlisted men en route to their homes or elsewhere after serving sentence as military prisoners.

3. Discharged soldiers, i. e., former enlisted men of the Army en route to their homes after discharge.

4. Retired soldiers, i. e., enlisted men of the Army en route to their homes after retirement.

5. Furloughed soldiers, i. e., enlisted men of the Army on furlough en route back to their proper stations.

15 In making payment for said transportation services the United States, through its accounting officers, against the protest and objection of the claimant, refused to pay the claimant therefor at the lawfully published tariff fares without land-grant deductions in manner chargeable for such services when rendered the general public, and paid claimant for said transportation only at the fares authorized for the transportation of "troops of the United States" over land-grant railroads.

V.

The difference between the amount so paid claimant for such transportation at land-grant fares, as for the transportation of "troops of the United States," and the amount which claimant was entitled to receive therefor at published tariff fares without land-grant deductions was nine hundred and forty-three dollars and fifty-five cents ($943.55), which which said amount was disallowed by the United States through its accounting officers,—the amount so disallowed with respect to each of the several classes of persons so transported being as follows:

1. Applicants for enlistment:	
(a) Accepted applicants	$1.31
(b) Rejected applicants	15.32
2. Discharged military prisoners	236.98
3. Discharged soldiers	666.16
4. Retired soldiers	11.50
5. Furloughed soldiers	12.28
	943.55

16

VI.

A statement, marked Exhibit A, showing in detail the various transactions herein referred to, the amounts claimed by the Union Pacific Railroad Company for the transportation services rendered by it to the United States as aforesaid at the published tariff rates, the amounts allowed by the accounting officers of the United States therefor and paid by the United States, and the amounts disallowed and remaining due and unpaid, is attached to and made a part of the original petition in this case, which statement is incorporated

by reference herein, except that that statement is corrected hereby to conform to the figures above stated as to the amounts deducted for accepted and rejected applicants.

VII.

Wherefore claimant says there is now justly due and owing it by the United States the sum of nine hundred forty-three dollars and fifty-five cents ($943.55), exclusive of all just credits and offsets, for which amount it prays judgment.

Claimant has at all times borne true allegiance to the United States, and has made no assignment or transfer of the aforesaid claims or of any interest therein.

UNION PACIFIC RAILROAD COMPANY, *Claimant*,
By CHARLES H. BATES, *Its Attorney in Fact.*

HARR & BATES,
Attorneys for Claimant.

17 DISTRICT OF COLUMBIA, *ss:*

Charles H. Bates, being first duly sworn, deposes and says that he has read the foregoing petition by him subscribed for and on behalf of the Union Pacific Railroad Company as its attorney in fact, and that the matters and things stated in said petition are true, as he verily believes.

CHARLES H. BATES.

Sworn and subscribed to before me this 9th day of March, 1916, the affiant being to me personally well known.

[NOTARIAL SEAL.] ALBERT C. WEST,
Notary Public, D. C.

18 III. *General traverse.*

Court of Claims.

THE UNION PACIFIC RAILROAD COMPANY,
vs.
THE UNITED STATES. } No. 33056

No demurrer, plea, answer, counterclaim, set-off, claim of damages, demand, or defense in the premises, having been entered on the part of the defendants, a general traverse is entered as provided by Rule 34.

19 IV. *Argument and submission of case.*

On January 26, 1917, the case was argued by Mr. Charles H. Bates, for the claimant, and Mr. Horace S. Whitman, for defendants, and thereupon submitted.

20 *V. Findings of fact, conclusion of law, and opinion of the court by Barney, J., filed February 19, 1917*

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

Findings of Fact.

I.

Claimant is a corporation duly created, organized, and existing under the laws of the State of Utah, and as such corporation now is, and was during all of the times when the services hereinafter mentioned were performed, engaged as a common carrier by railroad in the transportation of passengers and freight in and through various States of the United States and between the points referred to herein, either directly over its own lines or in conjunction with connecting carriers.

II.

Some years ago, and prior to the times when the services hereinafter mentioned were performed, the railroad companies of the United States generally, including claimant, severally agreed with the Quartermaster General of the United States Army (subject to certain exceptions not necessary here to be stated) to accept for the transportation of troops of the United States the lowest net fare and lowest net excess-baggage rate lawfully available as derived through deductions on account of land-grant distance via a usually traveled route for military traffic from a lawful fare filed with the Interstate Commerce Commission as applying from point of origin to destination at time of movement. These agreements, commonly known as "land-grant equalization agreements," were in force at the times of the transactions hereinafter referred to.

III.

At various times during the years 1913, 1914, and 1915 claimant, upon transportation requests issued by the War Department
21 of the United States, transported certain persons belonging to the following classes, to wit:

1. Applicants for enlistment in the Army:

(*a*) Accepted applicants, *i. e.*, applicants examined at general recruiting stations and found mentally, morally, and physically fit for service and being forwarded to recruiting depots or depot posts for final examination and actual enlistment.

(*b*) Rejected applicants, *i. e.*, those finally rejected at the recruiting depots or depot posts and being returned to the recruiting stations whence they came.

2. Discharged military prisoners, *i. e.*, discharged enlisted men en route to their homes or elsewhere after serving sentence as military prisoners.

3. Discharged soldiers, *i. e.*, former enlisted men of the Army en route to their homes after discharge.

4. Retired soldiers, *i. e.*, enlisted men of the Army en route to their homes after retirement.

5. Furloughed soldiers, *i. e.*, enlisted men of the Army on furlough en route back to their proper stations.

In making payment for said transportation services the United States, through its accounting officers, against the protest and objection of the claimant, refused to pay the claimant therefor at the lawfully published tariff fares without land-grant deductions in manner chargeable for such services when rendered the general public, and paid claimant for said transportation only at the fares authorized for the transportation of "troops of the United States" over land-grant railroads, in accordance with the agreement set out in the second request for finding of fact, for the transportation of troops of the United States.

IV.

The difference between the amount so paid the claimant for such transportation at land-grant fares and the tariff rate for the public without land-grant deductions was $943.55; which said amount was disallowed by the United States through its accounting officers, the amount so disallowed with respect to each of the several classes of persons so transported being as follows:

1. Applicants for enlistment:	
(*a*) Accepted applicants	$1.31
(*b*) Rejected applicants	15.32
2. Discharged military prisoners	232.83
3. Discharged soldiers	670.31
4. Retired soldiers	11.50
5. Furloughed soldiers	12.28
	943.55

Conclusion of Law.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the plaintiff is entitled to recover the amount shown in finding IV. It is, therefore, ordered and adjudged by the court that the plaintiff have and recover of and from the United States the sum of nine hundred and forty-three dollars and fifty-five cents ($943.55).

22 *Opinion.*

BARNEY, Judge, delivered the opinion of the court.

This is a suit brought by the Union Pacific Railroad Co. against the United States to recover certain land-grant deductions made by the defendants in a settlement with the plaintiff for the transporta-

tion of certain persons. These deductions were made on the ground that the following classes of persons were troops of the United States, and that by virtue of the land-grant statutes the plaintiff was obliged to transport these persons at the land-grant rates established and agreed upon by the parties.

The persons so transported were:

1. Applicants for enlistment.
2. Discharged military prisoners.
3. Discharged soldiers.
4. Retired enlisted men.
5. Furloughed soldiers.

Upon the authority of Lake Superior & Miss. R. R. Co. v. United States, 93 U. S., 442, where the land grants to railroads by similar provisions to those in the instant case, while the Government is entitled to the free use of such railroads as a public highway, that right does not carry with it the use of all the transportation facilities belonging to and connected with the railroad, and for such facilities furnished the railroad is entitled to a reasonable compensation. It seems that by legislative enactment acceded to by the railroads such reasonable compensation has been agreed upon as 50 per centum of the compensation paid by private parties for the same service.

As a condition to the granting of land to the plaintiff in this case it was provided "such railroad shall be and remain a public highway for the use of the Government of the United States free from toll or other charges upon the transportation of any property or troops of the United States." It becomes necessary, then, in the decision of this and similar cases to decide what classes of individuals and what individuals are embraced within the term "troops of the United States." It is contended for the defendants that the law is well settled that the land-grant statute is to be construed against the railroads, and this is doubtless true as to the extent and limit of such grants. Leavenworth, etc., R. R. v. United States, 92 U. S., 733, 740; Sioux City & St. Paul R. R. v. United States, 139 U. S., 396, 460; Oregon, etc., R. R. v. United States, 164 U. S., 539. But we know of no such rule made applicable to the conditions or consideration of such grants for the reason that the reason for the rule in the latter case does not exist. It was said by Justice Harlan in the opinion of the court in the Oregon, etc., R. R. case, supra, at page 539: "The rule of construction applicable to the granting act is the familiar rule that all grants of this description must be construed favorably to the Government, and that nothing passes but what is conveyed in clear and explicit language." (Citing cases.) "And that the construction should be such as will effectuate the legislative intention, avoiding, if possible, an unjust or absurd conclusion, is also well settled."

We see no reason for the application of any such rule to this case, for the further reason that the only question before us for
23 decision is the meaning and construction to be given to the

simple phrase "troops of the United States." As was said in Lake Superior, etc., R. R. v. United States, supra, "It might be very convenient for the Government to have more rights than it has stipulated for; but we are on a question of construction, and on this question the usus loquendi is a far more valuable aid than the inquiry what might be desirable" (pp. 454, 455).

If we go to the dictionary for the meaning of the word "troops" we find that it is defined in a military sense as "a body of soldiers; a muster of soldiers; an army."—Standard Dict.

The construction to be given to the word "troops" used in the same connection as in this case was before this court in the Alabama Great Southern R. R. case, 49 C. Cls., 522, and it was there held that it did not include the National Guard unless actually and not potentially in the service of the United States. In speaking for this court in that case, Campbell, C. J., said: "That the National Guard may become 'troops of the United States' within the meaning of said land-grant act is not to be questioned, but, as was said at the bar in this case, it is not the potentiality but the actuality of being in the service contemplated by the Constitution which fixes their status as 'troops.' The meaning of the act under which the claimant must transport troops is not to be restricted to the Regular Army, nor can it be extended to include the National Guard when not in the service of the United States" (p. 537).

The signification to be given to this word as used, as applied to contract surgeons, cooks, and other usual and necessary employees accompanying and used in connection with the transportation of bodies of the United States Army is not before us in this case and is not decided. This case is confined to particular classes of persons heretofore mentioned and those classes only are considered. However, we venture to lay down some rules of construction which should be followed in all these cases. We think that the general rule applicable to all of these cases is that, in order to come within the provisions of the land-grant act, the persons transported should be a part of the military organization of the United States and may in certain cases include the Naval Establishment, which, however, is not decided; if a body of troops is transported, every member of that body entitled to the provisions of the act must be a necessary member of that body, either directly or indirectly, in its movement; in cases of individual transportation, that is, where there is no movement of a body of troops, the person so transported to be entitled to its provisions must be himself an actual member of the military organization of the United States; in other words, be a soldier and traveling for the convenience of the Government.

In the light of these rules we come to the decision of the case before us.

Applicants for enlistment: This class is in no way connected with the military organization or any movement of the same and may never become so. "In order to become a soldier of the United States

Army—i. e., in order to become a fully enlisted man—the party must first enlist by signing the prescribed application, and he must then be accepted and sworn into the service by the proper officer." (Citing Coe v. United States, 44 C. Cls., 419, 427.) "Such persons
24 have not changed their status in life from that of ordinary citizens to that of a soldier and are not amenable to military jurisdiction. They are not members of the military organization and therefore are not included within the term 'troops of the United States'; and are not entitled to the reduced rates provided by the land-grant act and the decisions and arrangements under the same."

Discharged military prisoners: These persons when discharged from the service of the United States are no longer soldiers; in fact, they ceased to be soldiers when they were sent to prison, and when they are discharged from prison they have severed their relations with the United States; they are not under the control of the Government; and when they travel to their homes or elsewhere they are traveling for their own comfort and convenience. They certainly can not be troops of the United States, and can not be said to be traveling as such. It is said that the act making appropriation for "Transportation of the Army and its supplies" expressly provides for the transportation of discharged military prisoners. That is undoubtedly true. But it does not follow that the land-grant railroads are charged with this transportation. The United States, for sufficient reasons, choose to provide transportation for this class of persons, but they can not require railroads to transport these persons at land-grant rates unless the land-grant acts require it to be done. These land-grant roads are required to transport troops of the United States at rates which have been established and agreed upon between them and the United States. Discharged military prisoners are not troops of the United States. Nor can the contract of enlistment between the soldier and the United States, however it may be interpreted between the parties, be construed to impose a burden upon a third party whose obligations to the Government are clearly defined in the statutes.

Discharged soldiers: We next come to consider whether discharged soldiers are troops of the United States within the meaning of the statutes which we are discussing. The same reasoning applies to discharged soldiers as to discharged military prisoners. They cease to be soldiers when they are discharged. Their discharge takes effect on the date of notice to them of such discharge. Army Regulations, 1913, par. 152. When they travel after discharge they do so for their own comfort and convenience. The obligation of the Government to transport them to their homes or elsewhere does not affect their status as soldiers, does not give them a status which they do not have, and can not make them troops of the United States within the meaning of the land-grant statutes.

Retired enlisted men: This class forms no part of the organization of the Army. They sever their connection with the Army when they

go upon the retired list for the purpose of receiving at the hands of the Government retired pay. Murphy v. United States, 38 C. Cls., 511, 521. They are in effect pensioners. They have no military duty to perform and can not be required to perform any. It is true that in the act of April 25, 1914, 38 Stats., 350, known as the volunteer act, provision is made for the employment of retired enlisted men for the performance of certain military duties and, while so employed, they doubtless become "troops of the United States."

But when they are retired and furnished transportation to their homes or elsewhere they are traveling for their own comfort and convenience and not for the benefit of the United States and certainly are not "troops of the United States" within the meaning of the statutes under discussion.

Furloughed soldiers: What has been said herein regarding the other classes discussed is applicable to this class, for, while on furlough, they are performing no military duty. Soldiers on furlough are not allowed to take with them their arms or accouterments. Army Regulations, 113. They must travel back to their posts or commands at their own expense. Army Regulations, 110. However, this question as to them may be viewed from a different standpoint entirely. It is true that a soldier on furlough is a soldier of the United States and is in the service, but not on duty. The Army Regulations provide that the expense of his travel shall be borne by himself while traveling under furlough. It is also provided that in the event he is unable to pay the expense of his travel to his post or command the sum may be advanced by the commanding officer and reimbursement made by him out of his pay. The case before us does not require a decision upon this question of the right of the Government by proper regulations to provide that the expense of travel of a furloughed man while on furlough shall be borne by the Government. The regulations now provide that the expense of his travel shall be borne by him. In the instant case the furloughed man called upon the commanding officer for the necessary expense to travel back to his command, and subsequently he repaid the amount for the travel expense, and this was done in conformity with the Army Regulations.

It is difficult to see upon what theory the Government can make a deduction from the railroad's bill because of the land-grant act when the Government has been fully reimbursed for it by the soldier. Certainly it should not be contended that the Government could require the soldier to pay his own expense and reimburse itself out of his wages and then also make the railroad company allow it a further reduction. By private arrangement between the Government and the soldier the former has advanced a certain expense to the soldier for which he alone was liable. The soldier has repaid that expense. By treating the soldier's travel while on furlough as an individual matter for his own comfort and convenience, the Government has recognized that he was not traveling as a soldier or as a

part of the "troops of the United States." He has reimbursed the Government for what it has advanced him, and we do not see how the land-grant act can be invoked as having any influence whatever upon the situation. The Government assumed a liability to the railroad for the transportation of the soldier, and the soldier put the Government in funds to discharge that liability.

It follows from the foregoing that the plaintiff is entitled to judgment in the sum of $943.55, and it is so ordered.

Hay, Judge; Booth, Judge; and Campbell, Chief Justice, concur.
Downey, Judge, did not participate in the decision of this case.

26 VI. *Judgment of the court.*

At a Court of Claims held in the city of Washington on the 19th day of February, A. D. 1917, judgment was ordered to be entered as follows:

The Court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the Union Pacific Railroad Company have and recover of and from the defendants, the United States, the sum of nine hundred and forty-three dollars and fifty-five cents ($943.55).

BY THE COURT.

27 VII. *Defendants' application for, and allowance of, appeal.*

From the judgment rendered in the above-entitled cause on the 19th day of February, 1917, in favor of the claimant, the defendants, by their Attorney General, on the 12th day of April, 1917, make application for and give notice of an appeal to the Supreme Court of the United States.

HUSTON THOMPSON,
Assistant Attorney General.

Filed April 12, 1917.

Ordered: That the above appeal be allowed as prayed for.

BY THE COURT.

May 23, 1917.

28 In the Court of Claims.

THE UNION PACIFIC RAILROAD COMPANY	
vs.	No. 33056.
THE UNITED STATES.	

I, Sam'l A. Putman, Chief Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled

cause; of the findings of fact and conclusion of law filed by the Court; of the opinion of the Court; of the judgment of the Court; of the application of the defendants for, and the allowance of, appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this 24th day of May, A. D. 1917.

[SEAL.]

SAML. A. PUTMAN,
Chief Clerk Court of Claims.

(Indorsement on cover:) File No. 25985. Court of Claims. Term No. 518. The United States, appellant, vs. The Union Pacific Railroad Company. Filed June 1st, 1917. File No. 25985.

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INDEX.

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CASES AND AUTHORITIES CITED.

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

THE UNITED STATES, APPELLANT,
v.
UNION PACIFIC RAILROAD COMPANY. } No. 199.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This is an appeal by the United States from a judgment of the Court of Claims in favor of the claimant.

By reason of certain "equalization agreements" between the claimant and the Government it is entitled to receive for the transportation of troops only the same rates as are the railroads to whom Congress granted lands upon condition that "said railroad shall be and remain a public highway for the use of the Government of the United States, free from toll or other charges on the transportation of any property or troops of the United States." (Act of Mar. 3, 1863, sec. 3, 12 Stat. 772, 773.)

In 1876, it was determined by this Court (*Lake Superior, Etc., R. R. Co.* v. *United States*, 93 U. S. 442)

that this provision secured to the United States only the free use of the "railroad" as distinguished from the free use of its equipment and the services of its personnel and that the railroad companies were entitled to compensation for the transportation of troops and property of the United States, "subject to a fair deduction for the use of their respective railroads." Since that time, appropriation acts have provided for such compensation. They refer specifically to the land-grant acts and to the decisions of the Supreme Court construing them. The language of the act of March 2, 1913 (37 Stat. 704, 715), makes an appropriation—

> for the payment of army transportation lawfully due such land grant railroads as have not received aid in government bonds (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant acts) but in no case shall more than fifty per centum of full amount of service be paid.

At various times during the years 1913, 1914, and 1915 the claimant, upon transportation requests issued by the War Department, transported persons belonging to the following classes:

1. Applicants for enlistment in the Army: (*a*) Accepted applicants, i. e., applicants examined at general recruiting stations, and found mentally, morally, and physically fit for service, and being forwarded to recruiting depots or depot posts for final examination and actual enlistment; (*b*) rejected

applicants, i. e., those finally rejected at the recruiting depots or depot posts, and being returned to the recruiting stations whence they came.

2. Discharged military prisoners, i. e., discharged enlisted men en route to their homes or elsewhere, after serving sentence as military prisoners.

3. Discharged soldiers, i. e., former enlisted men of the Army en route to their homes after discharge.

4. Retired soldiers, i. e., enlisted men of the Army en route to their homes after retirement.

5. Furloughed soldiers, i. e., enlisted men of the Army on furlough, en route back to their proper stations.

The claimant asked to be allowed payment for the transportation of the above classes of persons at the rate charged for such services when rendered to the general public. The United States, through its accounting officers, paid the claimant at the rate of fares authorized for transportation of "troops of the United States" over land-grant railways. The present suit is for the difference between the amount demanded by the claimant and the amount allowed by the United States.

Since under the land-grant acts and the decision referred to, it is "troops of the United States" whose transportation is to be paid for at a rate subject to a fair reduction because of the right reserved by the United States in those acts, the present question is whether these classes of persons are within the definition of "troops of the United States" as those words are used in the land-grant legislation.

ARGUMENT.

I.

The words "troops of the United States" as used in land-grant legislation apply to all persons whose transportation is incident to the Government's military establishment.

The word "troop" is defined in the Century Dictionary as "A body of soldiers: generally used in the plural, signifying soldiers in general, whether more or less numerous, and whether belonging to the Infantry, Cavalry, or Artillery." In Webster's New International Dictionary the word is defined "Soldiers, collectively; an armed force."

But the word "troops" is a general term, and its meaning, as used in the land-grant legislation, is to be determined from the context in which it is used, the purpose of the legislation, the departmental construction placed upon it, and the rules of law applicable to the interpretation of such legislation.

A. The term "troops" must be given as broad a meaning as the term "property" used in the same statute.

With respect to the transportation of the property of the United States, there is no limitation upon the character or description of the property to be transported. If, as contended, the troops referred to in this legislation are only those carried incidentally to actual military operations, the result will be reached that the Government will be held to have retained

full rights with respect to the transportation of property, and only limited rights in the more vital matter of transportation of men in connection with its general military establishment. It is not necessary to cite authority for the rule that where the meaning of terms is uncertain a construction which will lead to absurd or mischevious results is to be avoided.

B. The right to transport troops must be coextensive with the needs of the Government.

This court has frequently said that where legislation admits of more than one construction, that should be adopted which best seems to carry out the purposes of the act. (*Hutchinson Investment Co.* v. *Caldwell*, 152 U. S. 65, 69.)

The basis for the deduction, in respect of troops of the United States, from the rates charged the general public is the condition annexed to the land grants and the declaration that in that respect such roads become public highways for the use of the Government, free of toll or other charge. Examining this right, construed by this court to be a right to run its own trains over the railroads (*Lake Superior & Mississippi Railroad Company* v. *United States*, 93 U. S. 442) a very broad construction is warranted, especially if the question arose as to what persons the Government should permit to ride on those trains.

If the roadway is a public highway for the free use of the Government for the transportation of any troops of the United States, such right must be coextensive with the needs of the Government.

That need begins when the first steps are taken in the process of securing men for its military service, and must continue until the completion of the obligation and duties assumed by the United States toward those whom it has secured, or attempted to secure, for such service. All such persons must, therefore, be regarded as troops for which transportation is required by the United States as incident to its military establishment.

The claimant seeks to limit his obligations in respect to the transportation of soldiers to the jurisdiction of court-martials over such soldiers, as indicated by the mustering in or the mustering out of service. In defining the respective jurisdiction of the civil and military tribunals, that change of status is important. But such change of status in the individual is not essential to the undertaking by the Government to transport men under certain circumstances in connection with the creation and maintenance of an army.

Nor does it affect the importance to the United States of being able, as an inducement to enlistment, to offer the benefit of the application of land-grant rates to those who enter or leave, permanently or for the time being, its active military service. Such a consideration may well have been one of those which resulted in the legislation in question.

The case of *In re Grimley*, 137 U. S. 147, 156–157, on which the claimant relies as holding that the oath of enlistment is the pivotal fact which changes the status from that of civilian to that of soldier, does

not conflict with the position taken by the Government in this case.

C. Under long-continued departmental construction troop transportation has been held to extend to all those transported as an incident to the Government's military establishment.

The Second Comptroller, June 22, 1885, held that the term "troops" as used in the land-grant acts was used in the broad sense to mean "the whole body of forces collectively"—"the Army"—and may therefore include a paymaster's clerk, a civilian, appointed or selected by approval of the Secretary of War at an annual salary to be paid out of the appropriations for the Army. (Second Comp. MS. Dec., vol. 51, p. 218.)

The second comptroller, February 4, 1890, held that the term "troops" as used in the land-grant acts "should be construed to mean the Army and all persons in connection therewith, either as laborers, mechanics, etc., who are paid out of the Army appropriation act and usually called 'civilian employees' of the Army." (See Comp. MS. Dec., vol. 59, p. 29; also sec. 1399, Digest Second Comp. Dec., vol. 3.)

The second comptroller, July 12, 1894, held that "the term 'troops of the United States' comprehends the entire military force of the United States; that is, the Army and all persons connected therewith, including its civilian employees and agents." (See Comp. MS. Dec., vol. 62, p. 406; and 16 Comp. Dec. 70, 71.)

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The Comptroller of the Treasury in a decision rendered August 3, 1909 (16 Comp. Dec. 70, 71), said:

> The term "troops" within the meaning of said (land-grant) acts comprehends the entire military, including naval, force of the United States; that is, the Army and Navy and all parties connected therewith, including their civilian employees and agents.

On February 26, 1908, Comptroller Tracewell was called upon to rule upon the question whether recruits who were being transported from recruiting stations to depots and rejected applicants who were being transported back to recruiting stations were "troops of the United States" within the land-grant legislation (15 Comp. Dec. 543). The appropriation act there in question (act of Mar. 2, 1907, 34 Stat. 1169, 1170) was identical with the appropriation act here. The Comptroller ruled, as contended by the United States in this case, that the persons in question were within the classes affected by the land-grant deductions.

Attorney General Miller in an opinion rendered to the Secretary of War (19 Op. A. G. 572) held that an officer in the Engineer's Corps traveling in discharge of the duties connected with the improvement of rivers and harbors was entitled to be carried as part of the troops of the United States under the land-grant acts, and stated that the question of whether the improvement was with a view to facilitating future military operations is a matter exclu-

sively for Government determination, and about which the railroad company had no right to inquire. A further opinion by Attorney General Miller (20 Op. A. G. 11) held that the transportation of enlisted men of the navy came within the land-grant acts.

It is a well-settled rule that the construction of a statute by officials charged with its administration is to be considered by the court, and in a doubtful case may be decisive. (*Brown* v. *United States*, 113 U. S. 568, 571; *United States* v. *Moore*, 95 U. S. 760, 763.) There is here long established and uniform construction in support of the position of the Government. It is a construction which meets the needs of the Government and so fulfills the purpose of the statute. It should now be accepted by the courts.

D. A grant of public property is to be construed in favor of the Government.

If there is any doubt as to the construction of the term "troops," the doubt must be resolved in favor of the Government. It is a familiar rule of construction that where a statute operates as a grant of public property to an individual or a corporation, that construction should be adopted which will support the claim of the Government, rather than that of the individual. This court has said, speaking through Mr. Justice Field (*Slidell* v. *Grandjean*, 111 U. S. 412, 437), "As a reason for this rule it is often stated that such acts are usually drawn by interested parties, and they are presumed to claim all they are entitled to."

It was suggested by the Court of Claims in this case that this rule of construction applies only to the extent of the grant, and not to the conditions or consideration of such grants. In view of the fact that the grantee may benefit either by reason of the nature and extent of the thing granted or by reason of the character of the consideration required to be given for the thing granted, the suggested distinction can not be regarded as sound.

II.

The present suit is to recover for transportation which was incidental to the Government's military establishment.

A. Applicants for enlistment.

An applicant for enlistment presents himself at a general recruiting station, and if he is accepted by the proper officer as qualified for service he is forwarded to a recruiting depot for final examination and enlistment. (Army Regulations, sec. 841.) Transportation is furnished by the Government to accepted applicants from the general recruiting stations to the recruiting depots, and return transportation to such applicants as are rejected on final examination. (Army Regulations, sec. 1115.) The applicant for enlistment receives the same rations and in the same manner as an enlisted man. (Army Regulations, secs. 1224, 1225, and 1232.) Applicants for enlistment while held under observation receive medical attention and treatment in the same manner as enlisted men. (Army

Regulations, secs. 1473, 1476, 1478, and 1480.) While the right to pay and the jurisdiction of court-martials commence with final acceptance and muster into the service, applicants for enlistment from the moment of their acceptance at a recruiting station are treated as a part of the Government's military establishment, and the transportation which is furnished them is required by the United States in connection with its military service.

B. Discharged military prisoners.

The Army appropriation act (act of March 4, 1915) provides for the transportation of—

> Prisoners on their discharge from United States disciplinary barracks, or from any place in which they have been held under a sentence of dishonorable discharge, and confined for more than six months.

Enlistment in the military service constitutes a contract between the soldier and the United States. (*In re Grimley, supra; Coe's Case*, 44 Court of Claims 419, 426.) In the oath of enlistment the soldier agrees "to accept from the United States such bounty, pay, rations, and clothing as are or may be established by law." (Army Regulations, sec. 855.) The transportation which the law authorizes to be furnished to discharged military prisoners is something which the Government is required to furnish such discharged prisoners by virtue of the contract of enlistment, and the obligation arises by reason of the discharged prisoner's relation to the Government

as a soldier. The transportation is promised to the recipient because he becomes a soldier and it is as such that he receives it.

C. Discharged soldiers.

The various Army appropriation acts have specifically provided for travel allowance to enlisted men on discharge. (See act of August 24, 1912, 37 Stat. 576; act of March 2, 1913, 37 Stat. 704, 715.) The same reason for which the transportation furnished discharged prisoners is to be regarded as a part of the contract of enlistment, applies with even greater force to the transportation to the point of enlistment of discharged enlisted men.

Even if the test proposed by the claimant is accepted, namely, liability to court-martial proceedings, it is apparent that the discharge of an enlisted man does not completely sever his connection with and his liability to the military authorities.

The 94th Article of War, which punishes certain frauds, embezzlements, etc., when committed by military persons, provides that if any person who has been guilty of any of these offenses while in the military service of the United States receives his discharge and is dismissed from the service "he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed."

It appears from the above that the discharge of an enlisted man does not necessarily terminate his liability to court-martial.

D. Retired soldiers.

It is provided by the first section of the act of February 2, 1901 (31 Stat. 748), that the Army of the United States shall consist, *inter alia*, of "the officers and enlisted men of the Army on the retired list." The rules governing retired enlisted men are found in the Army Regulations, sections 134–137. It is provided that an enlisted man upon being put upon the retired list shall be furnished with transportation in kind to his home, as well as commutation and subsistence during this necessary travel. On the last day of every calendar month he must report his post-office address to The Adjutant General of the Army. He is to receive three-fourths of the monthly pay allowed by law for the grade which he held when retired, as well as commutation of clothing and rations, and commutation in lieu of quarters, fuel, and light. Section 11 of the act of April 25, 1914, provides that "the President is authorized to employ retired officers, noncommissioned officers, and privates of the Regular Army, either with their rank on the retired list or, in the case of enlisted men, with increased noncommissioned rank."

It was held by this court in *United States* v. *Tyler*, 105 U. S. 244, that a statute increasing the pay of "each commissioned officer" applied to retired officers, the court saying: "We are of opinion that retired officers are in the military service of the Government." This court further said: "If Congress chose to provide for their qualified relief from active duty,

and for a diminished compensation, it did not discharge them from their other obligations as part of the Army of the United States."

It has been seen that a retired enlisted man reports regularly to his officers, receives pay, and is subject to call for duty. He, therefore, clearly comes within the decision of this court in *United States* v. *Tyler*, *supra*, and must be considered as in the military service of the Government, so that he receives transportation to his home upon his retirement as a part of the troops of the United States.

E. Furloughed soldiers.

Section 110 of the Army Regulations provides: "When an enlisted man who is absent on furlough or absent without leave from his station and is without means to return thereto reports at a station that is under the control of a departmental commander, such departmental commander is authorized to furnish the necessary transportation and subsistence for the return of the soldier to his proper station * * *.

The company commander will charge the cost of such transportation and subsistence against the soldier's pay on the next pay roll.

The furloughed soldier resumes duty when he reports at a station and the transportation in question is the transportation from the station to which he reports to the station at which his command is stationed. Transportation is furnished to him as a soldier on duty for the military purpose of having him rejoin his command. It can not be contended

that he is not a part of the "troops of the United States," nor that his transportation is not furnished for military purposes. The only question that arises is: Does the fact that the soldier, under present regulations, is required ultimately to pay the transportation charge place the case without the land-grant statute?

The transportation in such a case is, of course, furnished for the United States, and the United States is primarily liable therefor. Payment by the United States for the transportation of any troops over land-grant lines is to be made subject to proper land-grant deduction, and without regard to any collection made from the soldier by the United States. Whether the charge made by the United States against the soldier is upon the basis of the full fare without land-grant deduction, or with land-grant deduction, or upon some other basis, is a matter wholly between the United States and the soldier, and for adjustment between them alone.

CONCLUSION.

The appeal should be allowed and judgment entered for the United States.

LaRue Brown,
Assistant Attorney General.

Charles H. Weston,
Attorney.

January, 1919.

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IN THE

SUPREME COURT OF THE UNITED STATES.

No. 199.—October Term, 1918.

THE UNITED STATES, Appellant,

vs.

UNION PACIFIC RAILROAD COMPANY.

Appeal from the Court of Claims.

BRIEF FOR THE COMPANY.

WILLIAM R. HARR,
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Attorneys for the Union Pacific Railroad Company.

January 28, 1919.

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CASES AND AUTHORITIES CITED.

IN THE

SUPREME COURT OF THE UNITED STATES.

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THE UNITED STATES, Appellant,

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UNION PACIFIC RAILROAD COMPANY.

Appeal from the Court of Claims.

BRIEF FOR THE COMPANY.

Statement of Case.

The Union Pacific Railroad Company (a non-land grant road) brought suit in the Court of Claims to recover certain amounts deducted by the accounting officers of the United States from its bills for the transportation of (1) Applicants for Enlistment in the Army, (2) Discharged Military Prisoners, (3) Discharged Soldiers, (4) Retired Soldiers, and (5) Furloughed Soldiers, during the years 1913, 1914 and 1915, on account of land-grant, under the alleged authority

of the so-called Land Grant Equalization Agreements existing between certain railroads and the Quartermaster General of the United States, to which said Company is a party, by which agreements the railroads concerned agree to give the Government the benefit of the longest possible land-grant distance in the event shipment is made over their lines instead of over the land-grant route.

The Court of Claims, in a carefully considered opinion, held that said land-grant deductions were unwarranted and gave judgment for the Company for the full amount claimed. Thereupon the United States appealed to this Court.

This Court's attention is directed to the Finding of Facts made by the Court of Claims for a fuller statement of the case. (Rec., 7.)

QUESTION PRESENTED.

The only question involved in this case, both below and here, is whether any or all of the several classes of persons above mentioned are "troops of the United States" within the meaning of the reservations and restrictions concerning the transportation of troops and property of the United States contained in the several Acts making grants of land to the Western railroads, as enforced in the Army Appropriation Acts under which the transportation in question was authorized.

THE STATUTES INVOLVED.

There are two classes of land grant railroads. One class was granted lands upon the condition that—

"Said railroads shall be and remain a public highway for the use of the Government of the United States, free from toll or other charge upon the transportation of any property or TROOPS of the United States."

(Act of March 3, 1863, sec. 3, 12 Stat. 772, 773, and other Acts set out in published Circular No. 16, Quartermaster General's Office, 1912, entitled "Schedule of Land-Grant and Bond-Aided Railroads of the United States," p. 28 *et seq.*)

Another class of land-grant railroads were granted lands subject to such regulations as Congress might impose restricting charges for Government transportation.

(Act July 27, 1866, sec. 11, 14 Stat. 292, 297, and other Acts set out in aforesaid Circular of Quartermaster General's Office.)

As stated by the Comptroller of the Treasury in his decision of March 24, 1915 (21 Comp. Dec. 654), dealing with the accounts of the Union Pacific Railroad Company, involved in this case—

"Congress has provided (in Army appropriation Acts) that payment by the Government for transportation of TROOPS and munitions of war and military supplies and property over such aided railroads shall be paid on the basis of such rate for said transportation as the Secretary of War shall deem just and reasonable, such rate not to exceed 50 per cent. of the compensation for such Government transportation as shall at that time be charged to and paid by private parties for like and similar transportation. (See Act of July 14, 1892, 27 Stat. 180, and the Army appropriation Acts from then to the present time.)"

From this it appears that, as to the second class of land-grant railroads, Congress has undertaken in regulating their charges, to require the transportation, at reduced rates, of no other class of persons than "troops" of the United States.

We quote in full the provisions with respect to Army transportation contained in the Act of March 2, 1913, (37 Stat. 704, 715):

> TRANSPORTATION OF THE ARMY AND ITS SUPPLIES: For transportation of the Army and its supplies including transportation of the TROOPS when moving either by land or water and of their baggage, including the cost of packing and crating; for transportation of recruits and recruiting parties; of applicants for enlistment between recruiting stations and recruiting depots; for travel allowance to enlisted men on discharge; of persons on their discharge from the United States military prison or from any place in which they have been held under a sentence of dishonorable discharge and confinement for more than six months, or from the Government Hospital for the Insane after transfer thereto from such prison or place, to their homes (or elsewhere as they may elect), provided the cost in each case shall not be greater than to the place of last enlistment; of supplies furnished to the militia for the permanent equipment thereof; of the necessary agents and other employees; of clothing and equipage and other quartermaster stores from Army depots or places of purchase or delivery to their several posts and Army depots and from those depots to the troops in the field; of horse equipment; or ordnance and ordnance stores, and small arms from the foundries and armories to the arsenals, fortifications, frontier posts, and Army depots; for payment of wharfage tolls and ferriage; for transportation of funds of the Army; for the hire of employees; for

the payment of Army transportation lawfully due such land-grant railroads as have not received aid in Government bonds (to be adjusted in accordance with the decisions of the Supreme Court in cases decided under such land-grant Acts), but in no case shall more than fifty per centum of full amount of service be paid: *Provided,* That such compensation shall be computed upon the basis of the tariff or lower special rates for like transportation performed for the public at large and shall be accepted as in full for all demands for such service: *Provided further,* That in expending the money appropriated by this Act a railroad company which has not received aid in bonds of the United States, and which obtained a grant of public land to aid in the construction of its railroad on condition that such railroad should be a post route and military road, subject to the use of the United States for postal, military, naval, and other Government services, and also subject to such regulations as Congress may impose restricting the charge for such Government transportation, having claims against the United States for transportation of TROOPS and munitions of war and military supplies and property over such aided railroads, shall be paid out of the moneys appropriated by the foregoing provision only on the basis of such rate for the transportation of such TROOPS and munitions of war and military supplies and property as the Secretary of War shall deem just and reasonable under the foregoing provision, such rate not to exceed fifty per centum of the compensation for such Government transportation as shall at that time be charged to and paid by private parties to any such company for like and similar transportation; and the amount so fixed to be paid shall be accepted as in full for all demands for such service; * * * ."

ARGUMENT.

I.

The term "troops", as used in the Railroad Land-Grant Acts, includes only those persons who are regularly enlisted in the Army or Navy of the United States and whose transportation is a necessary incident of military operations.

The expression "troops of the United States" was undoubtedly used in the railroad land-grant Acts in its usual and ordinary sense, as signifying a body of soldiers, regularly enlisted in the service of the Government. And the provision for the free use of the railroad's highway suggests that it was contemplated that military exigencies might require the transportation of such troops from one place to another on the line of such railroads. In other words, *the transportation of the soldiery of the Nation* over such highways *for military purposes* was the thing contemplated by said Acts.

For example, on April 10, 1854, Senator Guin, speaking in the United States Senate upon the proposed Pacific Railroad, among other things said,—capitalization ours—(Cong. Globe, Vol. 28, p. 879):

> "As a military road, it should engage our attention as a means of protection to our citizens between the Mississippi and the Pacific.
>
> * * * * *
>
> "The contemplated railway would enable the Government to wield its military power with extraordinary rapidity and economy, and keep in check the dangerous and warlike tribes that roam along the foot of the Rocky Mountains; would re-

> duce the public expenditures for the transportation of TROOPS and military supplies * * *"

Referring to the purposes for which the Constitution was framed, as stated in its preamble, Senator Guin further said (*id.*):

> "The measure before us is one emphatically requiring at your hands by those significant terms. By accomplishing it, foreign fleets and armies will in vain assail us upon the Pacific or Atlantic. From ocean to ocean this new means of communication will carry our TROOPS and munitions of war, and enable us, by rapidity of overland communications to use the military power with such celerity as to defy successful invasion from any quarter. The Commander-in-Chief at Washington could issue his orders and move his armies with as much dispatch, from this to the other side of the Continent, as did the great Emperor in the field of his extensive operations during the wars of the First French Revolution * * * In case of war how are you without it to defend California and New Orleans? Where is your Navy by which to accomplish such a purpose? Where are your transports, or how would they reach their destination? How would you carry TROOPS, munitions or supplies over the mountains, and desert that separates the Pacific from the Mississippi?"

In *Dunn* v. *The People*, 94 Ill. 120, the Supreme Court of Illinois, referring to the word "troops" as used in the provision of the Federal Constitution (Art. I, sec. 10) that "No State shall, without the consent of Congress, * * * keep troops or ships of war in time of peace", said:

> "The word 'troops' conveys to the mind the idea of an armed body of soldiers whose sole occupation is war or service, answering to the regular army."

All the Standard Dictionaries define the term "troops" in substantially the same way: i. e. as a body of soldiers.

In *Lake Superior & Mississippi Railroad Co.* v. *United States*, 93 U. S. 442, this Court, in holding that the provision in the Act of May 5, 1864 (13 Stat. 64), that "the said railroad shall be, and remain, a public highway for the use of the Government of the United States, free from all toll or other charge for the transportation of any property or troops of the United States," did not entitle the Government to the *free transportation* of its troops and property by the railroad company, but only gave it the *free use of the railroad's highway as a means of transportation*, said (p. 454):

> "* * * It might have been very convenient for the Government to have more rights than it has stipulated for; but we are on a question of construction, and on this question the *usus loquendi* is a far more valuable aid than the inquiry what might be desirable."

We are here concerned likewise only with a matter of statutory construction, and while it might have been desirable, from the Government's standpoint, for Congress, in this class of land-grant Acts, to have reserved the right to transport anything or anybody it might see fit over the public highway so created, free of charge for the use of the same, as a matter of fact it only reserved the privilege of free transportation of

its "property or troops", and the *usus loquendi* with respect to the word "troops", does not permit of its extension to those (1) who are not in any sense a part of the Army of the United States—such as *applicants* for enlistment or *discharged* enlisted men; or (2), those who, although nominally a part of the military establishment, are being transported, not as "troops", but simply as an accommodation or gratuity to the individual. The latter class embraces the transportation of retired enlisted men and soldiers on furlough here involved.

The Government is contending that the railroad land-grant Acts should be construed as if they authorized the free use of the railroads' highway for *any governmental purpose*; but this view is not in accordance with the practical construction of those Acts, or with the accepted meaning of the words "*troops* of the United States".

The transportation of State Militia to the encampments and maneuvers of the Regular Army, in which they participate, is for a governmental *purpose*, but it is not, as the Court of Claims has held, transportation of the "*troops* of the United States" within the meaning of such land-grant Acts. (*Alabama Great Southern Railway Co.* v. *United States*, 49 Ct. Cl. 552.) From this decision the Government took no appeal.

We are not here concerned with the transportation of a body of soldiers—an army or a detachment thereof, but only with the transportation of certain individuals, some of whom (applicants for enlistment) never were in the Army of the United States, others of whom (discharged soldiers and discharged military prisoners) have severed their connection with the Army, or been retired (retired soldiers), and the transportation

of none of whom has anything to do with any military movement.

Assuming that, for the purpose of argument only, where the transportation of an Army or a detachment thereof, is involved, certain civilian attendants or employees necessarily connected with its movement might, under a liberal construction of the term "troops of the United States" as used in the railroad land-grant Acts, be held to be included therein, no such case as that is here presented.

When the transportation of an individual alone is involved, not only is his status (whether civil or military) to be considered, but the purpose of his transportation.

II.

(1) APPLICANTS FOR ENLISTMENT IN THE ARMY, (2) DISCHARGED MILITARY PRISONERS, and (3) DISCHARGED SOLDIERS, not being a part of the Army Organization, cannot under any hypothesis be considered "Troops of the United States" within the meaning of the Railroad Land-Grant and Army Appropriation Acts.

These three classes of persons are clearly not included in the category of "*troops* of the United States," since they do not even belong to the military establishment of the United States, and are not included within the classes of whom Congress has said the Army shall consist. (See Act of February 2, 1901, 31 Stat. 748, amending Sec. 1094, Rev. Stat.)

In making appropriations for the transportation of the Army and its supplies, Congress has treated the above-mentioned classes of persons as not included in the term "troops". Thus the Army Appropriation

Act of March 2, 1913, above quoted, provides separately for the transportation of rejected applicants, discharged military prisoners, and discharged soldiers, after first making an appropriation for the transportation of the "Army and its supplies, including transportation of the troops." The language of that provision is very significant and we quote the part referred to again in full:

> "TRANSPORTATION OF THE ARMY AND ITS SUPPLIES: *For transportation of the Army and its supplies, including transportation of the* TROOPS when moving either by land or water and of their baggage, including the cost of packing and crating; *for transportation of recruits* and recruiting parties; *of applicants for enlistment* between recruiting stations and recruiting depots; *for travel allowance to enlisted men on discharge; of persons on their discharge from the United States military prison* or from any place in which they have been held under a sentence of dishonorable discharge and confinement for more than six months, or from the Government Hospital for the Insane after transfer thereto from such prison or place, to their homes (or elsewhere as they may elect), provided the cost in each case shall not be greater than to the place of last enlistment; * * *"

In other words, Congress, in the above-quoted provision, has distinguished the movement of the Army, including the troops, as a military body, from transportation incident to the recruiting or discharge of troops.

Since it appears from the aforesaid quotation that Congress did not include the transportation of applicants for enlistment, discharged soldiers and discharged military prisoners in the preceding provision

for the "transportation of the Army and its supplies," it is manifest that, in the subsequent provisions of said paragraph limiting the rates to be paid for "Army transportation" by land-grant railroads, Congress could not have intended the classes of persons just mentioned to be included therein. Hence, there was no authority of law whatever for the accounting officers of the Government to make land-grant deductions in settling with claimants for the transportation of said classes of persons.

The opinion of the Comptroller of the Treasury of March 24, 1915, (21 Comp. Dec. 659) to the effect that the term "troops", as used in the land-grant Acts, has been or can be properly held to include persons not a part of the military establishment of the United States is not only inconsistent with the Act of Congress above mentioned, but with the prior decisions of his own office.

In the opinion of the Comptroller of the Treasury of February 26, 1908 (14 Comp. Dec. 545), it is stated (italics ours):

> "The Second Comptroller in a decision dated January 30, 1894, held that the rates of transportation provided in the various land-grant acts are *not* applicable to the transportation of *military prisoners on their discharge* from the military prison at Fort Leavenworth to their homes or elsewhere, *such discharged prisoners not being a part of the troops of the United States.* (See Digest Second Comp. Dec., Vol. 4, secs. 354 and 355.)"

In an opinion by the Second Comptroller rendered May 5, 1892, it was held that the transportation of a former soldier for the purpose of receiving an artificial

limb—the limb being given by the Government and the necessary transportation to have it fitted being directed to be furnished by the Quartermaster General of the Army—did *not* come within the provision of the land-grant Act there involved requiring the Oregon and California Railroad Company to transport "*troops* of the United States" free of charge.

The Comptroller's office has therefore expressly held that "discharged general prisoners" and "discharged soldiers" are *not* "troops of the United States" within the meaning of the railroad land-grant Acts; and properly so, because upon their discharge their relations with the Army cease and they resume the status of civilians. (1 Winthrop on Military Law, pp. 104-105.)

So also as to applicants for enlistment, whose status as civilians has never been changed.

A civilian making application for enlistment remains a civilian until he takes the oath prescribed by the Second Article of War. This is fully outlined in a decision of Comptroller Tracewell to the Secretary of the Navy, December 18, 1912, in which he cites previous decisions.

The Army Regulations (1910 ed., paragraph 864; 1913 ed., paragraph 857) provide:

> "The date on which the enlistment or reenlistment of any man is actually completed, by administering the oath, is the date of that enlistment, and must invariably be shown on the enlistment paper above the signature of the officer who administers the oath and thereby enlists the man.

This Court has held that "the taking of the oath of allegiance is the pivotal fact which changes the

status from that of civilian to that of soldier." (*In re Grimley*, 137 U. S. 147, 156-157.)

See also *Coe* v. *United States*, 44 Ct. Cl. 419, 426-427.

Applicants for enlistment in the Army first present themselves at a general recruiting station, and are there examined by the recruiting officer as to their physical, mental and moral fitness for service, and if they pass this examination they are forwarded to the recruiting depots or depot posts for final examination and enlistment. Recruiting officers at recruiting stations are specifically *forbidden* from making enlistments or reenlistments, except reenlistments of members of their recruiting parties. (See Army Regulations, 1908, paragraphs 851, 857; same, 1910, paragraphs 858, 864; same, 1913, paragraphs 841, 847.)

Those applicants who pass the preliminary examinations at the recruiting station are known in military parlance as "accepted applicants", while those who are finally rejected at the recruiting depot or depot posts are known as "rejected applicants". After their rejection, the latter are offered transportation at Government expense back to the recruiting station whence they came.

The published Report of the Adjutant General of the Army to the Secretary of War, 1915, p. 36, shows that for the fiscal year ending June 30, 1915, the total number of applicants for enlistment in the several recruiting districts of the United States was 168,842, of whom 45,111 were passed or "accepted" at the recruiting stations, and of the latter 5,866 were finally rejected at the recruiting depots and depot posts. Said report also states (p. 37) that "of the accepted applicants [for the entire Army, given as 48,813] 3,993 declined to enlist at depots or eloped en route." Manifestly, prior to actual enlistment these so-called "ac-

cepted" applicants had no actual military status, but were at most only "potential" soldiers, while those of them who were finally rejected had lost even that potentiality. As said by the Court of Claims of the State militia in *Alabama Great Southern Railroad Co.* v. *United States* (49 Ct. Cl. 522, 537), "it is not the potentiality but the actuality of being in the service contemplated by the Constitution which fixes their status as 'troops'."

III.

RETIRED ENLISTED MEN.

Under the law governing their retirement, retired enlisted men are merely "*pensioners*". (See Opinion of the Judge Advocate General of the Army, quoted in *Murphy* v. *United States*, 38 Ct. Cl. 517). And while Congress has declared that the Army shall be held to include officers and enlisted men on the retired list (Act of Feb. 2, 1901, 31 Stat. 748), until they are called, by or under the authority of Congress, into the military service of the United States, they are no more "troops of the United States" in any proper sense, and especially within the meaning of the railroad land-grant Acts, than a person who is a member of the Unorganized Militia of the United States. (See Act of June 3, 1916, chap. 134, sec. 57, dividing the Militia of the United States "into three classes, the National Guard, the Naval Militia, and the Unorganized Militia."

In the Act of April 25, 1914, cited by appellant, Congress merely provided that retired officers and enlisted men might be "employed" by the President, but not until after Congress had authorized the raising of volunteer forces, and even then it was provided "that

retired officers and enlisted men while thus employed shall not be eligible for transfer to field units." (38 Stat. 347, 350, chap. 71, sec. 11.)

It is true that a military reserve force, such as that constituted by the retired enlisted men, *if they should be called by Congress into the active service of the Government*, would constitute a part of the "troops of the United States," within the meaning of the railroad land-grant Acts, like the militia. But, to repeat, as held by the Court of Claims of the State militia, in *Alabama Great Southern Railroad Co.* v. *United States*, (49 Ct. Cl. 522, 537), "it is not potentiality but the actuality of being in the service contemplated by the Constitution which fixes their status as 'troops'." It is illogical and unwarranted to say that RETIRED enlisted men constitute a part of the "*troops* of the United States" within the meaning of the provision as to their free or reduced rate transportation over land-grant railroads, when, as here, such transportation has no relation to the performance of any military duties.

We are not concerned in this case, with the correctness of the decisions of the Comptroller that the term "troops of the United States" includes all *civilian employes* of the Army. And it is sufficient now to note that the Comptroller's view as to civilian employes rests upon the proposition that such employes may be intimately connected with the movement of the Army, which is in line with the point we are here making that *military service*, and *not mere nominal connection with the military establishment of the United States*, is necessary to constitute one a part of the "*troops* of the United States", within the meaning of the land-grant Acts.

IV.

The Transportation of FURLOUGHED SOLDIERS back to their proper stations is not transportation of the "Troops of the United States," within the meaning of the Railroad Land-Grant and Army Appropriation Acts.

As to the fifth class of persons, namely, "furloughed soldiers":—

A soldier on furlough is performing no military service and engaged in the discharge of no military duty, and his return to his command, under the circumstances here involved, is a personal matter. That the Government so regards it is shown by the fact that the Army Regulations require him to bear the expense of his transportation and subsistence back to his station. Upon application, if he is without means, his department commander is authorized to furnish such transportation and subsistence (Par. 110, U. S. Army Regs., 1910 and 1913), but the same regulation requires that—

> "The company commander will charge the cost of such transportation and subsistence against the soldier's pay on the next pay roll * * *"

This situation, under the rule applied by the Comptroller, presents the anomaly of making the return of a soldier, from furlough, transportation of the "troops of the United States" if the Government advances the means of transportation, and land-grant deductions are required from the charge therefor; but if the soldier buys the transportation himself, such transportation is not of the "troops of the United States", and no land-grant deductions are required! In other words, the Regulations, as interpreted by the Comp-

troller, put a premium on profligacy and extravagance on the part of the soldier on furlough, because only the soldier reporting from furlough who is without means can obtain a Government transportation request. In furnishing him such transportation (for which it is to be ultimately reimbursed by the soldier) the Government is merely extending him a courtesy—not even a gratuity. Certainly such transportation is no part of a military service.

ANALYSIS OF APPELLANT'S BRIEF.

The gist of Appellant's brief (as made in proof of brief served on us January 25, 1919,) lies in the point made therein that—

> "The words 'troops of the United States' as used in the land-grant legislation apply to all persons whose transportation is incident to the Government's MILITARY ESTABLISHMENT."

The difference between the phrase "troops of the United States" and "Military Establishment of the United States" is apparent, and is emphasized by the definitions which Appellant at once proceeds to quote from the Century and Webster's Dictionaries to the effect that the term "troops" signifies "a body of soldiers"; "soldiers collectively;" an "armed force". The narrow signification of the term "troops of the United States" and the broad scope of the "Military Establishment of the United States", especially during the recent world war, are too striking to require elucidation.

According to the Government's contention the transportation of all the civilian clerks of the War Department, from their homes to the Department and back

again, might be embraced in the Government's interpretation of the term "troops of the United States" as used in the Railroad Land-Grant Acts, since the work of such clerks presumably has some connection with the operation of the Military Establishment of the United States.

Appellant's contention that the term "troops" must be given as broad a meaning as the term "property" is also manifestly unsound, if by that is meant that the term "troops" shall include persons who are not troops and form no integral part of the "fighting forces" of the United States.

Besides, the term "property" is a comprehensive term and embraces all kinds of property, while the term "troops" signifies only a particular class of persons and necessarily excludes many other persons connected with the Military Establishment of the United States.

The fact that the Government may have undertaken to return an enlisted man to his home after his discharge cannot operate to increase the obligation of the railroad company, which has merely undertaken to transport "troops of the United States" free or at reduced rates.

In a similar case—that of the transportation of the personal effects of officers changing stations, in which the amount transported was within that authorized by the Army Regulations, and such transportation was on Government bill of lading and at the expense of the Government, the Court of Claims gave judgment for the claimant for amounts deducted from the carrier's bills for such transportation on account of land grant. (*Chicago, Milwaukee & St. Paul Railway* v. *United States,* 50 Ct. Cl. 412, no opinion.)

Counsel for the Government contends that this is a case for the application of the rule that a grant of public property is to be construed in favor of the Government.

But the answer is that we are not here concerned with the words of grant contained in those Acts, but with the provision whereby the Government sought to impose a burden upon the railroads as one of the conditions of the grant. In such case, it would seem, the rule should, if anything, be quite the reverse from that applicable where the grant is to be construed; that is to say, that the burden which the Government has sought to impose upon the railroad as a condition of the grant should be strictly construed, so as not to require the railroad to bear any greater burdens than the Government plainly intended to impose upon it. Certainly, if Congress, in making such grants, did not see fit to reserve to the Government as much power and privilege as it might have done, it is not for the courts, or the accounting officers of the Government, to extend the reservation. And this was the view announced by this Court in *Lake Superior, &c. Railroad Co.* v. *United States*, 93 U. S. 442, in construing a grant of this kind.

We submit that the general rule announced by the Court of Claims, in its opinion herein, for the determination of who are "troops of the United States", is as comprehensive as it can fairly be made, to wit (Rec. 10):

> "We think that the general rule applicable to all of these cases is that, in order to come within the provisions of the land-grant act, the persons transported should be a part of the military organization of the United States and may in certain cases include the naval establishment, which, how-

> ever, is not decided; if a body of troops is transported, every member of that body entitled to the provisions of the act must be a necessary member of that body, either directly or indirectly, in its movement; in cases of individual transportation, that is, where there is no movement of a body of troops, the person so transported to be entitled to its provisions must be himself an actual member of the military organization of the United States; in other words, be a soldier and traveling for the convenience of the Government."

The important point to bear in mind in the present case is that the Court is here concerned only with the transportation of certain individuals and not with the movement of a body of troops, and that therefore the point is narrowed down to the particular status of the several individuals referred to.

And when we come to the case of the transportation of individuals we find that, as above pointed out, the decisions of the Comptroller of the Treasury, prior to his decision upon the accounts involved herein, are against the Government's present contention.

CONCLUSION.

In conclusion we ask this Court's careful consideration of the able and thoroughly analytical opinion of the Court of Claims in this case.

The judgment of the Court of Claims should be affirmed.

Respectfully submitted,

WILLIAM R. HARR,
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Attorneys for the Union Pacific Railroad Company.

January 28, 1919.

UNITED STATES *v.* UNION PACIFIC RAILROAD COMPANY.

APPEAL FROM THE COURT OF CLAIMS.

No. 199. Argued January 30, 1919.—Decided March 31, 1919.

The term "troops of the United States," as used in land grant acts, and in the agreement of the Union Pacific Company, in relation to transportation for the Government, *held* not to embrace any of the following classes of persons, when traveling separately and not as part of a moving body or detachment of soldiers, *viz:* Discharged soldiers, discharged military prisoners, and rejected applicants for enlistment; applicants for enlistment, provisionally accepted, but subject to final examination and not sworn in; retired enlisted men; and furloughed soldiers *en route* back to their stations.
52 Ct. Clms. 226, affirmed.

THE case is stated in the opinion.

Mr. Assistant Attorney General Brown, with whom *Mr. Charles H. Weston* was on the brief, for the United States.

Mr. William R. Harr, with whom *Mr. Charles H. Bates* was on the brief, for appellee.

MR. JUSTICE BRANDEIS delivered the opinion of the court.

Most of the acts of Congress which granted lands in aid of railroads provide that they shall be "free from toll or other charge upon the transportation of any property or troops of the United States." [1] This clause was

[1] Circular No. 16, Quartermaster General's Office, 1912, entitled "Schedule of Land-Grant and Bond-Aided Railroads of the United States," p. 28, *et seq.* Act of September 20, 1850, c. 61, § 4, 9 Stat. 466,

construed in *Lake Superior & Mississippi R. R. Co.* v. *United States*, 93 U. S. 442, as conferring only the free use of the roadbed as a highway. Since then, under appropriate legislation, payment has come to be made by the Government for the transportation of property and troops at rates equal to fifty per cent. of those charged private parties. The Union Pacific, having entered into an agreement to that effect, claimed payment at the full rate for certain persons carried as passengers upon the request of the Government. The Auditor of the War Department refused to allow payment for these passengers at more than half-fares, on the ground that they were within the provision, for transporting "troops of the United States"; and his ruling was sustained by the Comptroller of the Treasury. (21 Decisions of the Comptroller, 651.) Thereupon this suit was brought in the Court of Claims for the amount disallowed; and judgment was rendered for the railroad. 52 Ct. Clms. 226. The case is here on appeal. The questions presented are

467. A few of the acts granting lands in aid of railroads provided that the grant is "subject to such regulations as Congress may impose restricting the charges for . . . government transportation." Act of July 27, 1866, c. 278, § 11, 14 Stat. 292, 297. The Army Appropriation Acts make provision for payment under both classes of statutes, payment in neither case to exceed fifty per cent. of the rates charged private parties. See Act of July 16, 1892, c. 195, 27 Stat. 174, 180; Act of March 2, 1913, c. 93, 37 Stat. 704, 715. Fifty per cent. has been adopted by the War Department as the standard rate of payment. The Union Pacific on May 15, and June 3, 1911, became a party to the so-called "Land-Grant Equalization Agreements" entered into by the Quartermaster General of the United States with most of the important roads of the United States in other than New England or Trunk Line territories. By these agreements, the several roads consented (with certain exceptions) to accept the same net rate on both passenger and freight traffic via their respective lines as are effective via land-grant lines. "Freight and Passenger Land-Grant Equalization Agreements and List of Carriers Participating," Circular No. 6, Office of Chief, Quartermaster Corps, 1913.

whether any of the following classes of persons are to be deemed "troops of the United States" within the provision of the land-grant acts:

1. Discharged soldiers; that is, former enlisted men of the Army en route to their homes after discharge.

2. Discharged military prisoners; that is, discharged enlisted men en route to their homes or elsewhere after serving sentence as military prisoners.

3. Rejected applicants for enlistment in the Army; that is, men who having passed the required tests at the recruiting stations and having been forwarded to the recruiting depots for final examination and enlistment, were there rejected and were being returned to the recruiting stations from which they came.

4. Accepted applicants for enlistment in the Army; that is, applicants examined at general recruiting stations, found mentally, morally, and physically fit for service, and being forwarded to recruiting depots for final examination and enlistment.

5. Retired soldiers; that is, enlisted men of the Army en route to their homes after retirement.

6. Furloughed soldiers; that is, enlisted men of the Army on furlough en route back to their proper stations.

None of these persons travelled as part of a moving army, troop, or body of soldiers. That is, they travelled separately as individuals, and (with few exceptions) each on a different day and to widely scattered destinations. Under recent acts of Congress and Army Regulations,[1] the transportation of persons of some of these classes is paid for by the Government.

In defining the transportation rights secured to the United States, these land-grant acts draw a broad distinction between freight and passengers. All "property"

[1] See acts cited in note 1, p. 358, *infra*. Army Regulations, 1913, §§ 145, 1235, 1379, 1115. Army Regulations, 1913, wherever cited herein, refers to the edition corrected to April 15, 1917.

of the Government, whatever its character and intended use, is to be carried "free of toll or other charge;" but of the many persons in its service, only "troops." The history of the legislation shows that both the broad term, "any property," and the narrower one, "troops," was adopted deliberately. The earliest land-grant act in which the provision appears is that of September 20, 1850, c. 61, § 4, 9 Stat. 466, 467, under which the Illinois Central was constructed. The bill as introduced [1] provided for the free transportation of "troops and munitions of war." It was amended so as to read "any property or troops." There had been an earlier act granting land to the State of Illinois for the construction of a canal (Act of March 30, 1822, c. 14, 3 Stat. 659) which was amended (Act of March 2, 1833, c. 87, 4 Stat. 662) so as to permit, on the same terms, the use and disposition of the land for railroads. That act provided for the free transportation of "any property of the United States, or persons in their service."

In 1850 the word "troops" had (and it has ever since had) an established meaning:—namely, "soldiers collectively,—a body of soldiers." Thus the Army Appropriation Act of that year (Act of September 28, 1850, c. 78, § 1, 9 Stat. 504, 506) provides for the "transportation of the army, including the baggage of the troops when moving either by land or water" and for "mileage, or the allowance made to officers for the transportation of themselves and baggage when travelling on duty without troops." The contemporary legislation draws a clear distinction also between troops, that is, those then having the status of soldiers, and those who once had been in, or were seeking to enter, the military service. Thus the Army Appropriation Act of March 2, 1847, c. 35, 9 Stat. 149, 151 (which provides in substantially the

[1] Cong. Globe, 1850, 31st Cong., 1st sess., vol. 19, pt. 1, p. 844.

same terms as that of 1850 for the transportation of troops) makes specific provision for "forwarding destitute soldiers to their homes," for the "comfort of discharged soldiers," and for "expenses of recruiting," which include the cost of transportation. See Army Regulations, 1857, § 1321. And the Resolution of March 3, 1847, [No. 7], 9 Stat. 206, authorizes the refund of moneys expended by the States and individuals "in organizing, subsisting, and transporting volunteers previous to their being mustered and received into the service of the United States for the present war, and for subsisting troops in the service of the United States." In view of the established meaning of the term "troops" as used by Congress the duty of the court is merely to apply the provisions of the act to the several classes of persons described above.

First. The first three classes, namely, discharged military prisoners, discharged enlisted men, and rejected applicants for enlistment, are clearly not "troops of the United States." Their status is that of the civilian. They form no part of the military establishment. They may go where they please and do what they please, subject to no more interference by the military authorities of the Government, than if they had never been, or had never sought to be, connected with the Army. They were travelling for their own personal ends. Congress recognizes the distinction between those forming part of the Army and those who do not, because they are recruits or have been discharged; and it makes special provision for their transportation.[1] Such had formerly been also the opinion of the Comptroller of the Treasury. Compare Digest, Second Comptroller's Decisions, vol. 4, §§ 354 and 355.

[1] E. g., Act of March 2, 1913, c. 93, 37 Stat. 704, 715; Act of April 27, 1914, c. 72, 38 Stat. 351, 364; Act of March 4, 1915, c. 143, 38 Stat. 1062, 1076.

Second. Applicants for enlistment who have been accepted provisionally, but have yet to be subjected to the final examination at the recruiting depots and to take the oath before they become a part of the soldiery of the Nation, are not "troops of the United States." It is the actual enlistment, the oath of allegiance, that changes the status from a civilian to soldier. Compare *In re Grimley*, 137 U. S. 147, 156–157; *Tyler* v. *Pomeroy*, 8 Allen, 480; 19 Decisions of the Comptroller, 367; Army Regulations, 1913, § 847. The officers at the recruiting stations are expressly forbidden to administer this oath. Army Regulations, 1913, § 841. Such applicant is then not even a potential soldier; for he may be rejected on final examination.[1] And it is the actual and not the potential status that must govern. Compare *Alabama Great Southern R. R. Co.* v. *United States*, 49 Ct. Clms. 522, 537. The fact that under the Army Regulations he receives the same rations as an enlisted man, and that he is subject to the same medical attention,[2] does not effect a change of status. And the fact that the transportation is for the purposes of the Government in connection with its military establishment is immaterial. Workmen in armor plants and civilian clerks in the War Department at Washington travel for purposes of the Government, but are obviously not "troops of the United States" within the meaning of the land-grant legislation. The Army Appropriation Acts make specific provision for the transportation of "troops" and of "recruits." [3]

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[1] Of the 45,111 applicants in the several recruiting districts of the United States provisionally accepted in the year ending June 30, 1915, 5,866 were finally rejected at the recruiting depots; 3,993 provisionally accepted applicants are recorded as having "declined to enlist at depots or eloped en route." Report of the Adjutant General, War Department, Annual Reports, 1915, vol. 1, pp. 202, 203.

[2] Army Regulations, 1913, §§ 1224, 1225, 1232, 1473, 1476.

[3] See, for example, acts cited in note 1, p. 358, *ante*.

Third. Retired enlisted men en route to their homes after retirement are also not "troops of the United States." They travel for their own purposes. Congress has declared that such retired men shall for certain purposes be deemed a part of the Army (Act of February 2, 1901, c. 192, § 1, 31 Stat. 748); but they may be employed only after Congress has authorized the raising of volunteer forces; and not even then for field duty. Act of April 25, 1914, c. 71, § 11, 38 Stat. 347, 350. The Army Regulations for 1913 make no provision requiring any service from retired enlisted men. Practically they have retired *from*, and not simply into a different branch of the Army. Compare *Murphy* v. *United States*, 38 Ct. Clms. 511, 522; Army Regulations, 1913, Article XX. See also *United States* v. *Tyler*, 105 U. S. 244. The fact that they may thereafter be called into the Army does not make them "troops of the United States." Any male citizen may at some time be called into the service. Compare *Alabama Great Southern R. R. Co.* v. *United States*, *supra*.

Fourth. The furloughed soldier is, of course, a part of the Army or troops of the United States; but his transportation back to the proper station, is not "transportation of troops" within the meaning of the land-grant acts. The furloughed soldier travels for his own purposes. The Government merely advances to him the cost of transportation and subsistence while on furlough; and does this, only if the soldier lacks funds to bear the expense himself. The advance must be repaid. Army Regulations, 1913, § 110.

We have no occasion to consider whether persons not enlisted as soldiers, but forming a part of a moving army or detachment are to be deemed "troops of the United States" within the provision of the land-grant acts; nor whether a soldier travelling for the purposes of the Government, but not for any purpose connected with war

or the preparation for war, falls within the provisions, 19 Op. Atty. Gen. 572.

The judgment of the Court of Claims granting full compensation for carriage of persons within the six classes considered is

Affirmed.